IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 81 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION (AHMEDABAD DIV.)

Versus

PARBATBHAI BHAGWANBHAI METALIA

Appearance:

1. Second Appeal No. 81 of 1997

MR. D.M.THAKKAR for M/S THAKKAR ASSOC.

for Appellant No.

MS NIRALI B MUNSHI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 20/04/2005

ORAL JUDGEMENT

Instant appeal u/s 100 of the Code of Civil Procedure ('the Code' for short') is directed against the

judgement and decree dated 31.12.1996 rendered in Regular Civil Appeal No.64 of 1984 by the learned District Judge, Amreli, by which the appeal filed by the respondent against the appellant came to be allowed and thereby judgement and decree dated 20.3.1984 recorded in Regular Civil Suit No. 44 of 1983 by the learned Joint Civil Judge (SD), Amreli, dismissing the Suit filed by the Respondent against the appellant for declaration and permanent injunction, came to be set aside and resultantly order dated 31.8.1981 passed in departmental inquiry by the appellant stopping one increment of of the appellant, was quashed and set aside and also the order dated 13.9.1982, passed by the appellant in departmental appeal and in review proceedings dismissing the respondent from service w.e.f. 1.10.1982, was also quashed and set aside and the respondent was declared to be continued in service of the S.T.Corporation on the same post which he held as Conductor in S.T.Corporation on the date of his dismissal and he was also declared to be entitled for the backwages.

2. For the sake of convenience, the parties herein are referred to as they are arrayed in the trial Court as plaintiff and defendants.

3. The facts giving rise to the instant appeal are as follows.

3.1 The plaintiff was serving as Conductor in S.T.Corporation in Amreli Division. On 3.5.1981, he was on duty in Express Bus from Satadhar to Damanagar in which 150 passengers were travelling. It was also alleged that the plaintiff had not issued tickets to 6 passengers of one group and two and half tickets to another group and also not recovered the fares from them. The passengers were charged under the provisions of the Motor Vehicle Act ('the Act' for short) and penalty was taken from them. According to him, he had issued tickets to almost all the passengers but it was impossible to issue the tickets to all the passengers within the short time (i.e. from the time of departure of Bus from the Bus Station till the time of checking) and these were the only passengers who were found without tickets. He had also inquired in a loud voice whether anybody was yet to collect ticket. He had issued tickets to passengers of a further distance and so there was no reason for him not to issue tickets to these passengers. According to the case of the plaintiff, the checking authority had given a go-by to the principles of natural justice and recorded the statement of the plaintiff and also that of the passengers who were found without tickets. According to

plaintiff, once the passengers were charged, there was no question of initiating the departmental inquiry. The checking authority submitted his report to the Divisional Controller who directed the Depot Manager to hold the inquiry and without application of mind, the department initiated the proceedings of major penalty. He further alleged that the charge did not furnish any particular or ground and the allegations were also vague. The Depot Manager who was inquiry officer imposed penalty of stoppage of his increment with future effect. The inquiry officer had not given copies of documents to the plaintiff. He preferred an appeal to the Defendant No.2 - Divisional Controller but he was not given an opportunity of being heard and the appellate authority dismissed his appeal and also decided to issue show cause notice of review. The plaintiff had given reply to show cause notice of dismissal but he was not heard and passed dismissal order which was quite illegal and void. It was also alleged that the Depot Manager had no power to hold inquiry because he was a civil servant covered under Article 311 of the Constitution of India. According to Disciplinary and Conduct Rules, Divisional Controller was the Disciplinary Authority and he was the appointing authority. Therefore, the Depot Manager had no powers to hold inquiry and so the inquiry was without jurisdiction. Moreover Divisional Controller had no powers to exercise review jurisdiction even otherwise once the appeal was filed before him. According to the plaintiff, both the officers had not applied their minds to the facts of the case and there was no case of any misconduct or negligence. According to the plaintiff, he was residing at Matirala and so the order of dismissal which was posted on notice board was not a valid service and that Section 112-A of Motor Vehicle Act applies but no opportunity was given under the said Section and therefore also dismissal proceedings were void. It was also the case of the plaintiff that the Rules were not certified by the Labour Commissioner and so they do not assume the character of standing order. Therefore, the plaintiff had filed the Suit to declare that the order of inquiry officer stopping his increment was void and review show cause notice was also void. Consequently he prayed for permanent injunction restraining the defendants from enforcing the order of dismissal.

3.2 The Suit was contested by the defendants by filing Written Statement at Exh. 10 wherein they have contended that the inquiry was legal and valid. It was denied that charge did not furnish the particulars of the ground and the allegations were vague. It was also denied that the plaintiff was not given any opportunity

of being heard and that Article 311 of the Constitution of India was applicable to the plaintiff. It was denied that the Depot Manager had no power to hold the inquiry under Disciplinary and Conduct Rules and it was contended that both the officers have applied their mind and passed the orders. According to them, on 7.5.1981 the plaintiff was on duty as Conductor in Satadhar-Damanagar route Bus. The said Bus was checked by checking officer and 8 1/2 passengers were found without tickets. The statements of the plaintiff and passengers were recorded on the spot. The plaintiff had not asked any copies of the documents before the inquiry officer. It was further contended that dismissal order could not be passed because strike notice was received by them. The inquiry officer and the competent authority had given sufficient opportunity of being heard to the plaintiff and thereafter passed order. On the aforesaid premises the defendants denied the Suit claim of the plaintiff and it was prayed to dismiss the Suit.

4. On the pleadings of the parties, the learned trial Judge framed issues at Exh.26 and recorded oral as well as documentary evidence.

5. On appreciation, evaluation and critical analysis of the evidence, the learned trial Judge came to the conclusion that the plaintiff failed to prove that the inquiry officer had no authority to hold inquiry, to issue show-cause notice, the inquiry was not legal and conducted without giving reasonable opportunity, as alleged, the show-cause notice for dismissal was ultravires and void and, therefore, it was held that the plaintiff was not entitled to claim the relief as prayed for and resultantly dismissed the Suit filed by the Plaintiff with costs.

6. Aggrieved by the judgement and decree passed by the learned trial Judge, dismissing the Suit filed by the Plaintiff, the Plaintiff carried the matter to the District Court, Amreli by filing Regular Civil Appeal No. 64 of 1984. The learned District Judge, on reappreciation, reevaluation and reanalysis of the evidence, came to the conclusion that the learned trial Judge has committed grave error in dismissing the Suit by holding that the order passed by the S.T.Corporation in the departmental appeal was legal and proper. Therefore, according to the learned District Judge, the judgement and decree passed by the learned trial Judge as well as the order passed in the departmental appeal were required to be quashed and set aside and accordingly he quashed and set aside those orders which has given rise to the

present appeal at the instance of Defendants/Gujarat State Road Transport Corporation.

7. The appeal has been admitted by this Court vide order dated 11.11.1997 on the following substantial questions of law:

(1) Whether the Civil Court and the Appellate Court had jurisdiction to entertain this dispute when the remedy is provided by the provisions of the Industrial Disputes Act?

(2) Whether the Civil Court can sit over the judgement of the departmental authority as regards punishment and undertake the task of re-appreciating the evidence?

8. Mr. D.M.Thakkar, learned advocate of the defendant, has contended that the impugned judgement and decree passed by the learned District Judge is absolutely unjust, erroneous, without application of mind and against the settled principles of law as laid down by the Apex Court. It is also asserted that the Civil Court had no jurisdiction to try the present Suit when it was specifically contended before it that in view of the recent ruling of the Supreme Court that in such cases, appropriate remedy is to approach the forum created under the Industrial Disputes Act, i.e. Industrial Tribunal and jurisdiction of the Civil Court is impliedly barred. It is pointed out by him that the learned District Judge proceeded to reevaluate and reappreciate departmental proceedings in most of the part of the judgement and decree. According to him, the Civil Court or the District Court cannot sit over as appellate authority to the departmental proceedings and the findings of the departmental authority. The Civil Court has very limited scope to exercise its jurisdiction where departmental proceedings are challenged before the Court. According to him the order of the District Court of granting reinstatement to the employee from the date of his dismissal and also granting the backwages is absolutely bad, illegal and without application of mind. He, therefore, urged that substantial questions of law formulated by this Court at the time of admission of the appeal are required to be answered in favour of the defendant, i.e.GSRTC and against the plaintiff by allowing this appeal and thereby dismissing the Suit filed by the plaintiff by upholding the order passed in departmental inquiry by the defendants stopping increment of one year of the plaintiff as well as order dated 13.9.1982 passed in the departmental appeal and review

dismissing the plaintiff from service from 1.10.1982. He, therefore urged to allow this appeal.

9. In counter submission Ms. Nirali B. Munshi, learned advocate of the plaintiff, has contended that the impugned judgement and decree passed by the learned District Judge does not call for any interference as according to her there is no substantial question of law involved in this appeal. She, therefore, urged to dismiss the appeal. Alternatively she has also contended that since the Civil Court has no jurisdiction when the remedy is provided by the provision of Industrial Disputes Act, liberty may be reserved in favour of the plaintiff to approach the Industrial Tribunal.

10. This court has considered the submissions advanced by the learned advocates appearing for the parties, perused the impugned judgement and decree; one which is passed by the learned trial Judge and the second one passed by the learned District Judge and also gone through the evidence, the copies whereof are supplied by the learned advocates appearing for the parties, during the course of their submissions and judgement cited at the bar.

11. There is no dispute with regard to the factual matrix of the case. In the instant case the plaintiff was working as Conductor in S.T.Corporation in Amreli Division. On 3.5.1981 he was on duty in Express Bus from Satadhar to Damanagar in which 150 passengers were travelling. It was alleged that the plaintiff had not issued tickets to 6 passengers of one group and two and half tickets to another group and also not recovered the fares from them. The passengers were charged under the provisions of the Motor Vehicle Act and penalty was taken from them. According to the plaintiff, he had issued tickets to almost all the passengers but it was impossible to issue the tickets to all the passengers within short time and these were the only passengers who were found without tickets. According to him, he had also inquired in a loud voice whether anybody was yet to collect ticket. According to him, he had issued tickets to passengers of a further distance and so there was no reason for him not to issue tickets to these passengers. According to the case of the plaintiff, the checking authority had given a go-by to the principles of natural justice and recorded his statement and also of those passengers who were found without tickets. According to him, once the passengers are charged, there is no question of initiating the departmental inquiry. The checking authority submitted his report to the Divisional

Controller who directed the Depot Manager to hold the inquiry and without making any application of mind department initiated the proceedings of major penalty. He further alleged that charge does not furnish any particular or ground and the allegations are also vague. The Depot Manager who was inquiry officer imposed penalty of stoppage of his increment with future effect. He preferred an appeal to Defendant No.2 - Divisional Controller but he was not given an opportunity of being heard and dismissed his appeal and also decided to issue show cause notice of review stating as to why he should not be dismissed from service. The plaintiff had given reply to show cause notice. After hearing him, the Divisional Controller dismissed him from service. The said order of dismissal from service was subject matter of challenge before the trial Court.

12. The defendants had raised contention that Civil Court had no jurisdiction to try the Suit in view of catena of decisions of the Supreme Court that in such cases appropriate remedy is to approach the forum created under the Industrial Disputes Act, i.e. the Industrial Tribunal and jurisdiction of the Civil Court is impliedly barred. In this regard, the substantial questions of law formulated by this Court while admitting the appeal, are required to be examined and answered.

13. In the case of Rajasthan State Road Transport Corporation and Another v/s. Krishna Kant reported in AIR 1995 SC 1715, the Supreme Court Court has laid down the following principle:

"(1) Where the dispute arises from general law of contract, i.e. where reliefs are claimed on the basis of the general law of contract, a suit filed in Civil Court cannot be said to be not maintainable, even though such a dispute may also constitute an 'Industrial Dispute' within the meaning of Section 2(k) or Section 2-A of the Industrial Disputes Act, 1947.

(2) Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial Disputes Act, the only remedy is to approach the forums created by the said Act."

14. Applying the principle laid down by the Supreme Court in above referred to judgement to the facts of the present case, there is no dispute that in the instant case, the dispute does not involve any general law of

contract and it only arises out of the right or obligations created by the Industrial Disputes Act. It cannot be disputed that the controversy in the present case does not centered around any general law of contract, as it only arises out of the right or obligations created by the Industrial Disputes Act. Therefore, according to this court, the courts below have wrongly exercised its jurisdiction. On perusal of para 16 of the impugned judgement and decree passed by the learned District Judge, the above referred authority in the case of Rajasthan State Road Transport Corporation (supra) has been considered. However, the learned District Judge has recorded an erroneous conclusion, by holding that the Industrial Disputes Act does not apply to the present case. This finding is absolutely perverse, baseless and without application of mind and therefore is required to be struck down by this Court. This Court is of the considered opinion that in such case Civil Court did not have any jurisdiction. The remedy for the plaintiff was only to approach the Industrial Tribunal under the Industrial Disputes Act. Therefore, the first substantial question of law is required to be answered in favour of the Defendants and against the plaintiff by holding that Civil Court had no jurisdiction and the Industrial Tribunal alone has jurisdiction to entertain the said dispute.

15. Now, this takes me to answer to the second substantial question of law formulated by this Court. According to the defendants, Civil Court cannot sit over the judgement of the departmental appeal and undertake the task of reappreciating the evidence. In this connection it is advantageous to refer to the judgement of the Supreme Court in the case of R.C.Sharma v/s The Union of India, AIR 1976 SC 2037 wherein it is specifically laid down that a suit challenging the validity of the departmental proceedings cannot be treated as an Appeal from the findings in the departmental proceedings or the punishment inflicted upon the Government servant even if these are erroneous. A question which could affect the result in a Civil Suit has to be of such a nature that it goes to the root of the jurisdiction and the conduct of the departmental trial and vitiate the result. It is only if the departmental proceedings is null and void that a plaintiff in such a suit could obtain the reliefs he had asked for.

16. Applying the principle laid down by the Supreme Court in above referred to judgement to the facts of the present case, there is no manner of doubt that the Civil

Court cannot sit over appeal over the result of the departmental proceedings and decide its legality and validity unless the proceeding is shown to be null and void. In the instant case plaintiff is unable to demonstrate how the proceeding against him was null and void.

17. This Court finds that the basic premise of decreeing the suit filed by the plaintiff is incorrect. It appears from the record that the plaintiff was found not issued tickets and not recovered fares from the passengers. This showed his malafide. When an employee holding a sensitive post of trust has been dismissed from service, the matter may have to be believed in a different light. There is a rule in S.T.Corporation that in Express Bus, upto 6 kilometres, road booking is allowed but it appears that the plaintiff had not issued tickets to 8 1/2 passengers even after 6 kilometres till the checking party checked the said Bus. Therefore the plaintiff could not give any satisfactory reply why tickets were not issued to 8 1/2 passengers till his Bus was checked. The intention of the plaintiff for not issuing tickets was not good. Therefore, the Divisional Controller has rightly issued the order of dismissal of the plaintiff from service. He had also given sufficient reason why punishment was required to be reviewed and also given sufficient opportunity to the plaintiff. The primary duty of the Conductor is to realise the fare and not doing so and allowing the passengers either to travel free of charge or by realising less charges and not depositing the fare with the Transport Corporation, cannot be taken lightly. This is so held by the Supreme Court in the case of State of Haryana and another v/s Rattan Singh, AIR 1977 SC 1512 and Karnataka State Road Transport Corporation v/s B.S.Hullikatti (2001) 2 SCC page 574.

18. In view of the aforesaid discussion, the second substantial question of law is also required to be answered in favour of the Defendant and against the plaintiff by holding that the Civil Court cannot sit over the judgement of the departmental authority as regards the punishment and undertake the task of reappreciating the evidence. In the instant case, the learned District Judge has undertaken the task of reappreciating the entire evidence in the matter of departmental inquiry and punishment imposed upon the plaintiff.

19. In aforesaid view of the matter, the impugned judgement and decree passed by the learned District Judge, Amreli deserves to be quashed and set aside by

allowing the appeal filed by the respondent, by restoring the judgement and decree of dismissal of the Suit passed by the learned Civil Judge (SD), Amreli.

20. For the foregoing reasons, this appeal succeeds and accordingly it is allowed with no order as to costs. Resultantly judgement and decree dated 31.12.1996 rendered in Regular civil Appeal No. 64 of 1984 by the learned District Judge, Amreli, allowing the appeal filed by the respondent against the appellant, is hereby quashed and set aside and thereby judgement and decree dated 20.3.1984 recorded in Regular Civil Suit No. 44 of 1983 by the learned Civil Judge (SD), Amreli dismissing the Suit filed by the plaintiff against the defendant, is ordered to be restored, the result of which would be, the order dated 31.8.1981 passed in the departmental inquiry by the defendant, stopping increment of one year of the plaintiff and the order dated 13.9.1982 passed by the defendant in departmental appeal and review proceeding, dismissing the plaintiff from service from 1.10.1982, are hereby confirmed and maintained.

(A.M.Kapadia,J)

Jayanti*